

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,
AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 3030 OF 1999

Date: 10.11.2005

BETWEEN:

B. Hanumantha Reddy

.... PETITIONER

And

The Municipal Council, Nizamabad,
Nizamabad District, rep. by its
Commissioner.

.... RESPONDENT

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 3030 OF 1999

ORDER:

The petitioner is the proprietor of a cinema theatre in Nizamabad Town. He is aggrieved by the notice issued under Section 228 (1) of the A.P. Municipalities Act, 1965 (for short 'the Act'). In the impugned notice, it is alleged that the petitioner installed shop rooms with M.S. Framed structure below the balcony in the open space, affecting the proposed road widening as per the sanctioned master-plan, vide G.O.Ms.No.46, dated 15.2.1974. The petitioner was asked by the said notice dated 11.2.1999 to remove the illegally constructed shops in three days, and he was informed that in default necessary action will be taken as per the law. Without filing any objections to the Municipality, the petitioner rushed to this Court, and obtained interim order.

A counter affidavit is filed by the Commissioner, Nizamabad Municipality (now Municipal Corporation) alleging that the petitioner illegally installed shop rooms below the balcony of

the cinema theatre, which is affecting the open space meant for 80 feet wide master-plan road, and therefore a notice was issued. It is further alleged that the petitioner also filed W.P.No.7995 of 2000 along with another person seeking payment of compensation, and the same was disposed of on 25.1.2002. The respondent is taking action in accordance with the judgment. It is also alleged that after detecting the unauthorized construction made by the petitioner, a notice was issued under the Act.

Various submissions made by the learned counsel for the petitioner justifying the presence of shops, cannot be decided at this stage. The respondent issued notice under Section 228 (1) of the Act as required under law. Therefore, in the first instance the petitioner can approach the Municipality (now Municipal Corporation) and file explanation to the impugned notice, justifying the construction of shops. If he has constructed the shop without obtaining any prior permission, he can even seek for regularization, if the law permits. If the petitioner files explanation to the impugned notice, the same shall be considered by the respondent Municipality in accordance with law, duly passing an order with reasons, before taking any coercive action against the petitioner. The petitioner is given liberty to file explanation within a period of ten days from the date of receipt of this order.

The Writ Petition, with the above observations and directions, is accordingly disposed of. No costs.

(V.V.S. RAO, J.)

10th November, 2005

Note: Issue C.C. tomorrow

(By order)/ Js.